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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/802,098	03/07/2001	Shmuel Shaffer	062891.0545	4922
7590		11/19/2004	EXAMINER	
Barton E. Showalter		PHUNKULH, BOB A		
Baker Botts L. L. P.		ART UNIT		
2001 Ross Avenue, Suite 600		PAPER NUMBER		
Dallas, TX 75201-2980		2661		

DATE MAILED: 11/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/802,098

Applicant(s)

SHAFFER ET AL.

Examiner

Bob A. Phunkulh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 March 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,11-15,17,22-26,28 and 34-39 is/are rejected.
- 7) ☒ Claim(s) 4,6-10,16,18-21,27 and 29-33 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 5, 11, 13-15, 17, 22, 24-26, 28, 34, 36-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Yargo et al. (US 6,356,545), hereinafter Yargo.

Regarding claim 1, Yargo discloses a method for selecting one of a plurality of codecs for communication session, the method comprising the following steps performed by an endpoint participating in the communication session:

receiving a plurality of assessment packets (*receiving a plurality of self-describing data packets in a voice data stream on a receiving end, claim 1*);

determining at least one network parameter based on the assessment packets (*acquiring a voice quality measurement from said self-describing data packets, see claim 1*);

selecting one of plurality of codecs using the least one network parameter (*dynamically changing codec algorithms in response to said voice quality measurement on a packet-to-packet basis for each packet in said plurality of self-describing data*

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*packets for optimizing the voice quality of the information contained in each said packet,*

**claim 1); and**

communicating media using the selected codec.

Regarding claim 2, Vargo discloses the assessment packets comprise a plurality of real-time transfer control protocol (RTCP) packets without media (see col. 10 lines 37-43; and col. 11 lines 20-25).

Regarding claim 3, Vargo discloses the at least one network parameter comprises packet loss and delay (*the architecture thereby seeks to attain the best speech quality and lowest latency given the level of data loss over the Internet detected by the system, see col. 2 lines 57-60*).

Regarding claim 5, Vargo discloses monitoring the at least one network parameter; and selecting a new codec from the plurality of codecs in response to a change in the at least one network parameter (*dynamically changing codec algorithms in response to said voice quality measurement on a packet-to-packet basis for each packet in said plurality of self-describing data packets for optimizing the voice quality of the information contained in each said packet, claim 1*).

Regarding claim 11, Vargo discloses the media comprises voice information; and the at least one network parameter comprises a network parameter that impacts voice quality experienced by a user participating in the communication session (see claim 1).

Regarding claim 13, Vargo discloses an apparatus for selecting one of a plurality of codecs for a communication session, comprising:

a network interface operable to receive a plurality of assessment packets (*a gateway server for receiving a plurality of self-describing data packets in a voice data stream on a receiving end, see claim 11*);

a plurality of codecs (*dynamically changing codec algorithms, claim 11*);

a processor coupled to the network interface and the codecs, the processor operable to determine at least one network parameter based on the assessment packets, the processor further operable to select one of a plurality of codecs using the at least one network parameter (*dynamically changing codec algorithms in response to said voice quality measurement on a packet-to-packet basis for each packet in said plurality of self-describing data packets for optimizing the voice quality of the information contained in each said packet, and a voice port in said gateway server for acquiring a voice quality measurement from said self-describing data packets received by said gateway server, see claim 11*).

Regarding claim 14, Vargo discloses the assessment packets comprise a plurality of real-time transfer control protocol (RTCP) packets without media (see col. 10 lines 37-43; and col. 11 lines 20-25).

Regarding claim 15, Vargo discloses the at least one network parameter comprises packet loss and delay (*the architecture thereby seeks to attain the best speech quality and lowest latency given the level of data loss over the Internet detected by the system, see col. 2 lines 57-60*).

Regarding claim 17, Vargo discloses the processor is further operable to: monitor the at least one network parameter; and select a new codec from the plurality of codecs in response to a change in the at least one network parameter (see claim 11).

Regarding claim 20, Vargo discloses monitoring the at least one network parameter; and selecting a new codec from the plurality of codecs in response to a change in the at least one network parameter (*dynamically changing codec algorithms in response to said voice quality measurement on a packet-to-packet basis for each packet in said plurality of self-describing data packets for optimizing the voice quality of the information contained in each said packet, claim 1*).

Regarding claim 24, Vargo discloses logic encoded in media for selecting one of a plurality of codecs for communication session, the logic comprising the following steps performed by an endpoint participating in the communication session:

receiving a plurality of assessment packets (*receiving a plurality of self-describing data packets in a voice data stream on a receiving end, claim 1*);

determining at least one network parameter based on the assessment packets (*acquiring a voice quality measurement from said self-describing data packets, see claim 1*);

selecting one of plurality of codecs using the least one network parameter (*dynamically changing codec algorithms in response to said voice quality measurement on a packet-to-packet basis for each packet in said plurality of self-describing data packets for optimizing the voice quality of the information contained in each said packet, claim 1*); and

communicating media using the selected codec.

Regarding claim 25, Vargo discloses the assessment packets comprise a plurality of real-time transfer control protocol (RTCP) packets without media (see col. 10 lines 37-43; and col. 11 lines 20-25).

Regarding claim 26, Vargo discloses the at least one network parameter comprises packet loss and delay (*the architecture thereby seeks to attain the best*

*speech quality and lowest latency given the level of data loss over the Internet detected by the system, see col. 2 lines 57-60).*

Regarding claim 28, Vargo discloses monitoring the at least one network parameter; and selecting a new codec from the plurality of codecs in response to a change in the at least one network parameter (*dynamically changing codec algorithms in response to said voice quality measurement on a packet-to-packet basis for each packet in said plurality of self-describing data packets for optimizing the voice quality of the information contained in each said packet, claim 1*).

Regarding claim 34, Vargo discloses the media comprises voice information; and the at least one network parameter comprises a network parameter that impacts voice quality experienced by a user participating in the communication session (**see claim 1**).

Regarding claim 26, Vargo discloses an apparatus for selecting one of a plurality of codecs for a communication session, comprising:

means for receiving a plurality of assessment packets (*a gateway server for receiving a plurality of self-describing data packets in a voice data stream on a receiving end, see claim 11*);

means for determining at least one network parameter based on the assessment packets (*a voice port in said gateway server for acquiring a voice quality measurement from said self-describing data packets received by said gateway server, see claim 11*);



means for selecting one of a plurality of codecs using the at least one network parameters (*dynamically changing codec algorithms, claim 11*); and

means for communicating media using the selected codes (*dynamically changing codec algorithms in response to said voice quality measurement on a packet-to-packet basis for each packet in said plurality of self-describing data packets for optimizing the voice quality of the information contained in each said packet, and a voice port in said gateway server for acquiring a voice quality measurement from said self-describing data packets received by said gateway server, see claim 11*).

Regarding claim 37, Vargo discloses the assessment packets comprise a plurality of real-time transfer control protocol (RTCP) packets without media (see col. 10 lines 37-43; and col. 11 lines 20-25).

Regarding claim 38, Vargo discloses the at least one network parameter comprises packet loss and delay (*the architecture thereby seeks to attain the best speech quality and lowest latency given the level of data loss over the Internet detected by the system, see col. 2 lines 57-60*).

Regarding claim 39, Vargo discloses the media comprises voice information; and the at least one network parameter comprises a network parameter that impacts voice quality experienced by a user participating in the communication session (**see claim 1**).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12, 23, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vargo in view of Lo et al. (US 6,798,786), hereinafter Lo.

Regarding claims 12, 23, and 35, Vargo fails to explicitly disclose the codecs implement at least a selected one of a G.711, G.723, and G.729 voice compression standard.

Lo, on the other hand, discloses the codecs of the gateway implement at least a selected one of a G.711, G.723, and G.729 voice compression standard (see col. 4 lines 54-67). It should be noted that these standards are ITU-T recommendations for voice algorithms.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention was made to cause the end point of Vargo to implement at least a selected one of a G.711, G.723, and G.729 voice compression standard in order to comply with the ITU-T recommendation.

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***Allowable Subject Matter***

Claims 4, 6-10, 16, 18-21, 27, 29-33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

**Any response to this action should be mailed to:**

The following address mail to be delivered by the United States Postal Service (USPS) only:

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P. O. Box 1450  
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**or faxed to:**

(703) 872-9306, (for formal communications intended for entry)

**Or:**

The following address mail to be delivered by other delivery services (Federal Express (Fed Ex), UPS, DHL, Laser, Action, Purolater, Hand Delivery, etc.) as follow:

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Arlington, VA 22202.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Bob A. Phunkulh** whose telephone number is **(571)**

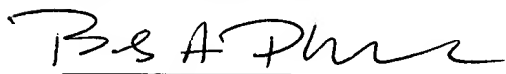
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**272-3083.** The examiner can normally be reached on Monday-Tuesday from 8:00 A.M. to 5:00 P.M. (first week of the bi-week) and Monday-Friday (for second week of the bi-week).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's acting supervisor **Kenneth Vanderpuye**, can be reach on **(571) 272-3078**. The fax phone number for this group is **(703) 872-9306**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**Bob A. Phunkulh**



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November 12, 2004

**BOB PHUNKULH  
PRIMARY EXAMINER**